

**IN THE DISTRICT COURT MORRIS COUNTY
TENTH JUDICIAL DISTRICT OF KANSAS**

NEIL LITKE;)	
)	
Petitioner,)	
)	
v.)	Case No.
)	
THE BOARD OF COUNTY)	
COMMISSIONERS OF MORRIS COUNTY,)	
KANSAS <i>in their official capacity.</i>)	
)	
Defendants.)	
_____)	

PETITION

(Under 2021 Senate Bill 40; Supreme Court Administrative Order 2021-RL-032)

COMES NOW, Petitioner Neil Litke, brings this action pursuant to 2021 Senate Bill 40 and Supreme Court Administrative Order 2021-RL-032 as an aggrieved person under the Morris County Requirements for Face Coverings issued August 4, 2021 (the “Order”), stating and alleging as follows:

1. Petitioner Neil Litke resides in Morris County. Petitioner resides at 112 S. Rockhill St., Council Grove, Kansas 66846.
2. Petitioner is aggrieved by the Morris County Requirements for Face Coverings, an Order issued by a Local Health Officer and approved by the Board of County Commissioners of Morris County which qualifies as an order under Senate Bill 40, Sec. 12(d). The Order was issued, approved, and filed on August 4, 2021 within 30 days of the filing of this Petition.
3. A copy of the Order is attached hereto as **Exhibit A**.
4. The Order mandates the wearing of face masks which expressly places the order under the purview of Senate Bill 40, Sec. 12(b)(1)(2).

5. In addition, the Petitioner is engaged in the civic activity of living and conducting business in Morris County. Petitioner is compelled to wear a face mask in numerous instances throughout each day. Petitioner served in the United States Marine Corps. and believes strongly in freedom and personal choice. Petitioner Litke is aggrieved by the broad nature of the Order and wishes to see Morris County abide by Senate Bill 40, Section 12 and narrowly tailor the Order. A narrowly tailored Order would have less impact on Petitioner's daily life. Furthermore, Petitioner is particularly aggrieved by the semi-permanent nature of the Order.

6. The Order states it "will remain in effect until rescinded by the Morris County Health Officer"—creating a mask mandate with no foreseeable expiration and which potentially continues perpetually. The Petitioner requests the Court narrow the effective date of the Order such that it must be reviewed by the Board of Morris County Commissioners (the "Board") every 30 days due to the fact that the Local Health Officer, the Board, and the Court cannot know possibly know the applicable health conditions, least restrictive means, or even compelling governmental interest *ad infinitum*. Accordingly, a 30-day order is more narrowly tailored than one continuing at the Local Health Officer's sole discretion, but still allows the Board adequate time to judge changing conditions. Accordingly, a 30-day order is more narrowly tailored than one continuing at the Local Health Officer's sole discretion, but still allows the Board adequate time to judge changing conditions. Moreover, because the Board does not know the conditions, compelling interest, or least restrictive means that may be most prudent 31 days after the issuance of the initial order, the Order as written is by definition more restrictive than necessary. Because the Order lasts longer than the period under SB 40 during which an aggrieved party may ask for court review, regardless of the conditions on day 31 or after, the Order is not the least restrictive means by which the Board may achieve the purpose stated in the Order.

7. Additionally, the Order is not the least restrictive means to accomplishing the purpose stated in the Order because:

- A. The Order is universal, unlike similar orders in Douglas County or Johnson County that only apply to certain age groups.
- B. Unlike orders in Johnson County and Douglas County, the Order applies to outdoor activity.
- C. The Order lacks any exemption for religious activity, which has been granted in other order such as Douglas and Johnson counties.
- D. The Order lacks any exemption for strenuous physical activity or indoor exercise.
- E. The Order lacks any exemption for swimming.
- F. There is no exemption for those working in private office space that can be closed.
- G. The Order requires all Morris County businesses and organizations to "require all employees, customers, visitors, members, or members of the public to wear a mask" while inside. This provision deputizes private business owners into enforcement arms for the Order, even if doing so would be detrimental to their business or organization. In Petitioner's experience since the issuance of the Order.

8. No other cases have been filed by the Petitioner related to the Order.

9. The Petitioner acknowledges the Judgement and Final Order After Intervention issued in Case Number 2021-CV-2385 issued by the Johnson County District Court and notes that it was stayed by the Kansas Supreme Court in Case Number 124205. Given the District Court's Judgement and Final Order After Intervention in 2021-CV-2385, the Petitioner hereby

WAIVES strict adherence to the statutory timelines outlined in SB 40, including but not limited to the issuance of a written decision within seven days of hearing, but respectfully requests that this matter be heard as soon as possible by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court issue an Order narrowly tailoring the Morris County Requirements for Face Coverings issued August 4, 2021 and limit its effective period to 30 days without action by the Board to extend the mandate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted this 3rd day of September 2021.

KRIEGSHAUSER NEY LAW GROUP

By:

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ATTORNEYS FOR THE PETITIONER



Morris County KANSAS



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Morris County Requirements for Face Coverings

POSTED ON: AUGUST 4, 2021 - 4:20PM

The Morris County Health officer has issued the following order beginning at 12:01am on August 7, 2021. This order will remain in effect until rescinded by the Morris County Health Officer. This order may be expanded and or modified by the health officer as circumstances dictate in order to mitigate the spread of COVID-19 in Morris County.

Any person in Morris County shall cover their mouth and nose with a mask or other face covering when they are in the following situations:

- Inside, or in line to enter, any indoor public space
- Obtaining services from the healthcare sectors, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, or veterinary clinic
- Riding on public transportation or ride-sharing vehicle
- While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity

EXHIBIT A

All businesses or organizations in Morris County must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering inside public spaces.

The following are exempt from wearing masks or other face coverings in the situations described above:

- Persons under the age of five.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering-this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance
- Persons who are deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines
- Persons who are obtaining a service involving the nose, mouth, or face for which temporary removal of the face covering is necessary to perform the service
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a 6-foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity.
- Athletes who are engaging in an organized sporting competition.
- Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering
- Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law

Businesses, Organizations, or facilities may impose more strict regulations than are ordered by the Morris County Health Officer, but may not be less restrictive.

Daniel Frese, MD
Morris County Health Officer

Morris County, Kansas

501 W Main Street
Council Grove, KS 66846
Phone: 620-767-5518

Hours

Monday - Friday: 8:00AM - 5:00PM
Closed Saturdays and County Holidays

 Site map



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